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HOUSE BILL NO. 1588

Offered January 19, 2018

A *BILL to amend and reenact § 59.1-200 of the Code of Virginia, relating to the Virginia Consumer Protection Act; prohibited practices; failure of consumer reporting agency to report data breach.*

Patron—Convirs-Fowler

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That § 59.1-200 of the Code of Virginia is amended and reenacted as follows:****§ 59.1-200. Prohibited practices.**

A. The following fraudulent acts or practices committed by a supplier in connection with a consumer transaction are hereby declared unlawful:

1. Misrepresenting goods or services as those of another;
2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or services, with another;
4. Misrepresenting geographic origin in connection with goods or services;
5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits;
6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;
7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective, blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds," irregulars, imperfects or "not first class";
8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell at the price or upon the terms advertised.

In any action brought under this subdivision, the refusal by any person, or any employee, agent, or servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;

9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts installed;

11. Misrepresenting by the use of any written or documentary material that appears to be an invoice or bill for merchandise or services previously ordered;

12. Notwithstanding any other provision of law, using in any manner the words "wholesale," "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the supplier's business, unless the supplier is actually engaged primarily in selling at wholesale or in manufacturing the goods or services advertised or offered for sale;

13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages, or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth, or under federal statutes or regulations;

13a. Failing to provide to a consumer, or failing to use or include in any written document or material provided to or executed by a consumer, in connection with a consumer transaction any statement, disclosure, notice, or other information however characterized when the supplier is required by 16 C.F.R. Part 433 to so provide, use, or include the statement, disclosure, notice, or other information in connection with the consumer transaction;

14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction;

15. Violating any provision of § 3.2-6512, 3.2-6513, or 3.2-6516, relating to the sale of certain animals by pet dealers which is described in such sections, is a violation of this chapter;

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59 16. Failing to disclose all conditions, charges, or fees relating to:

60 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign
61 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be
62 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does
63 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of
64 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not
65 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account
66 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.
67 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any
68 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision
69 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise
70 reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser
71 has requested the supplier to order merchandise of a specific or unusual size, color, or brand not
72 ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a
73 transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in
74 § 46.2-100;

75 b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time
76 of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the
77 premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill
78 of sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches
79 the agreement;

80 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess
81 of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment
82 on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of
83 receiving overpayments. If the credit balance information is incorporated into statements of account
84 furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;

85 17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in
86 connection with a consumer transaction, failing to adhere to the terms and conditions of such an
87 agreement;

88 18. Violating any provision of the Virginia Health Club Act, Chapter 24 (§ 59.1-294 et seq.);

89 19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et
90 seq.);

91 20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et
92 seq.);

93 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4
94 (§ 59.1-207.17 et seq.);

95 22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.);

96 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32
97 (§ 59.1-424 et seq.);

98 24. Violating any provision of § 54.1-1505;

99 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter
100 17.6 (§ 59.1-207.34 et seq.);

101 26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;

102 27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.);

103 28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.);

104 29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et
105 seq.);

106 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et
107 seq.);

108 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.);

109 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;

110 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;

111 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;

112 35. Using the consumer's social security number as the consumer's account number with the supplier,
113 if the consumer has requested in writing that the supplier use an alternate number not associated with
114 the consumer's social security number;

115 36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;

116 37. Violating any provision of § 8.01-40.2;

117 38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;

118 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.);

119 40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;

120 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46

121 (§ 59.1-525 et seq.);
 122 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.);
 123 43. Violating any provision of § 59.1-443.2;
 124 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.);
 125 45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;
 126 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;
 127 47. Violating any provision of § 18.2-239;
 128 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);
 129 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has
 130 reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable
 131 presumption that a supplier has reason to know a children's product was recalled if notice of the recall
 132 has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale
 133 on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to
 134 children's products that are used, secondhand or "seconds";
 135 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.);
 136 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;
 137 52. Violating any provision of § 8.2-317.1;
 138 53. Violating subsection A of § 9.1-149.1;
 139 54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential
 140 dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective
 141 drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in
 142 which defective drywall has been permanently installed or affixed;
 143 55. Engaging in fraudulent or improper or dishonest conduct as defined in § 54.1-1118 while
 144 engaged in a transaction that was initiated (i) during a declared state of emergency as defined in
 145 § 44-146.16 or (ii) to repair damage resulting from the event that prompted the declaration of a state of
 146 emergency, regardless of whether the supplier is licensed as a contractor in the Commonwealth pursuant
 147 to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1; ~~and~~
 148 56. Violating any provision of Chapter 33.1 (§ 59.1-434.1 et seq.); *and*
 149 57. *Failing to disclose, as required by § 18.2-186.6, a breach of the security of a computerized data*
 150 *system following discovery or notification of the breach of the security of the system, if the person*
 151 *failing to make a required disclosure is a consumer reporting agency as defined in § 59.1-335.2 and*
 152 *fails to make the required disclosure within 15 days following the date the consumer reporting agency*
 153 *became aware that as a result of the breach unencrypted or unredacted personal information was, or is*
 154 *reasonably believed to have been, accessed and acquired by an unauthorized person.*
 155 B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or
 156 lease solely by reason of the failure of such contract or lease to comply with any other law of the
 157 Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation
 158 provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable
 159 such contract or lease.